

R E M A R K S

It is respectfully requested that the Examiner enter and consider Claims 1 to 9 in the version set forth in Appendix III attached to this paper. Accordingly, Claim 6 is amended as indicated in the Listing of Claims set forth in in Appendix I.

More particularly, applicants have revised the definition of M to refer to "an equivalent of" a metal atom in light of the Examiner's criticism under Section 112, ¶2, concerning Claim 9. The specification at page 6, indicated lines 9 and 10, of the application has been revised accordingly. As originally disclosed in the respective section of the disclosure, M preferably represents inter alia Zn. It is well known in the art that Zn cannot occur in an oxidation state of +1. A person of ordinary skill in the art therefore immediately recognizes that M in formula (III) has to correspond to "an equivalent of" a metal atom, rather than a metal atom as stated in the original section. The respective revision of Claim 6 and the corresponding disclosure on page 6 of the application is therefore not deemed to introduce new matter.

Since the rejection which necessitated the revision of Claim 6 and the corresponding disclosure on page 6 of the application was only raised in the final Office action, applicants could not have presented the amendment earlier.

Additionally, applicants have introduced a cross-reference to provisional application No. 60/043,820 at the outset of the description in accordance with the Examiner's suggestion

Neither one of the foregoing changes is believed to necessitate further search and/or consideration which would bar entry of the amendment at this stage of proceedings. Entry and consideration of the amendments is therefore respectfully solicited.

Claims 1 to 9 remain rejected under 35 U.S.C. §102(a) as being anticipated by *Pfrenge* (US 5,981,534) which was filed on September 25, 1998. Applicants have submitted an application to reissue U.S. Patent No. 6,255,309 which issued in the parent of the present application. The reissue application aims to correct the claim to priority in the parent case to include the claim to the priority of PCT/US 98/05615, filed on March 23, 1998. Pending issuance of the reissue application

including the corrected claim to priority, the present application is at least entitled to the March 23, 1998, date as the earliest U.S. filing date, and the disclosure of *Pfrenge* is no longer applicable under Section 102(e). Also, in light of the terminal disclaimer which applicants submitted in *US 5,981,543* (copy provides with applicants' previous reply), any rejection under the judicially created doctrine of double patenting is obviated. Favorable action is respectfully solicited.

REQUEST FOR EXTENSION OF TIME:

It is respectfully requested that a two month extension of time be granted in this case. A check for the \$410.00 fee is attached.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11.0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

KEIL & WEINKAUF



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Encl.: THE SUBSTITUTE SECTION(S) OF THE SPECIFICATION (Appendix I)
THE CHANGE(S) IN THE SPECIFICATION (Appendix II)
THE LISTING OF CLAIMS (Appendix III)
THE AMENDED CLAIMS (Appendix IV)

HBK/BAS

A P P E N D I X I:

THE SUBSTITUTE SECTION(S) OF THE SPECIFICATION:

On page 1:

- Prior to the section heading "Background of the Invention" insert the following new paragraph:

This application claims the benefit of U.S. Provisional Application No. 60/043,820, filed April 14, 1997.

On page 6:

- Delete the paragraph beginning in indicated line 9 and ending in indicated line 10 and insert in its stead:

M represents a hydrogen atom or an equivalent of a free or complexed metal atom, preferably selected from the group consisting of Li, Na, K, Zn and Cu,

A P P E N D I X II:

THE CHANGE(S) IN THE SPECIFICATION:

On page 1:

- Prior to the section heading "Background of the Invention" the following new paragraph has been added:

This application claims the benefit of U.S. Provisional Application No. 60/043,820, filed April 14, 1997.

On page 6:

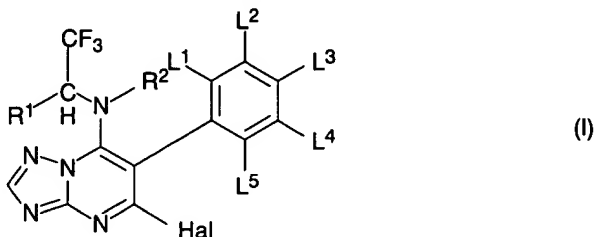
- The paragraph beginning in indicated line 9 and ending in indicated line 10 has been amended as follows:

M represents a hydrogen atom or an equivalent of a free or complexed metal atom, preferably selected from the group consisting of Li, Na, K, Zn and Cu,

A P P E N D I X III:

THE LISTING OF CLAIMS (version with markings, showing the changes):

1. (previously presented) A compound of formula I



in which

R¹ represents a hydrogen or a methyl group;

R² represents a hydrogen atom or an optionally substituted C₁-C₁₀-alkyl, C₂-C₁₀-alkenyl, C₂-C₁₀-alkynyl, C₄-C₁₀-alkadienyl or phenyl group, wherein the optional substituents are selected from the group consisting of nitro, cyano, C₃-C₆-cycloalkyl, C₃-C₆-cycloalkenyl, C₁-C₆-haloalkyl, C₃-C₆-halocycloalkyl, C₁-C₆-alkoxy, C₁-C₆-haloalkoxy, tri-C₁-C₄-alkylsilyl, phenyl, halophenyl, dihalophenyl and pyridyl;

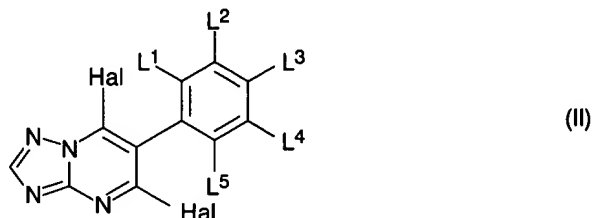
Hal represents a halogen atom; and

L¹ through L⁵ each represent a hydrogen or halogen atom or an C₁-C₁₀-alkyl, C₁-C₁₀-alkoxy or nitro group, provided that at least one of L¹ through L⁵ represents a nitro or alkoxy group.

2. (original) A compound according to claim 1 in which at least one of L¹ and L⁵ represents a halogen atom.
3. (original) A compound according to claim 1 in which R² represents a hydrogen or a C₁₋₁₀ alkyl group.
4. (original) A compound according to claim 1 in which at least one of R¹ and R² represents a hydrogen atom.
5. (previously presented) The compound of formula I defined in claim 1 which is selected from the group consisting of
- 5-chloro-6-(4-methoxyphenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,-4]triazolo[1,5-a]pyrimidine;
- 5-chloro-6-(4-nitrophenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,4]-triazolo[1,5-a]pyrimidine; and

5-chloro-6-(2,6-difluoro-4-methoxyphenyl)-7-[2-(1,1,1-trifluoro)-propyl)amino]-[1,2,4]triazolo[1,5-a]pyrimidine.

6. (currently amended) A process for the preparation of a compound of formula I as defined in claim 1, which process comprises:
treating a compound of formula II



with an amine of formula III



in which M represents a hydrogen atom or an equivalent of a metal atom,

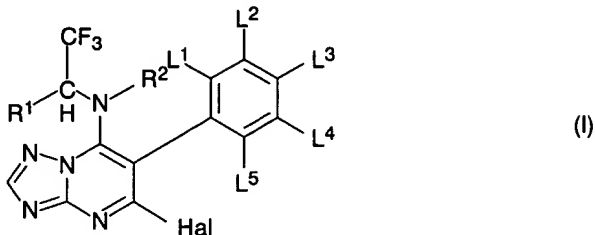
to produce the compound of formula I.

7. (previously presented) A fungicidal composition which comprises a carrier, and as active agent, at least one compound of formula I as defined in claim 1.
8. (previously presented) A method of combating fungus at a locus which comprises treating the locus with a fungicidally effective amount of a compound of formula I as defined in claim 1.
9. (previously presented) The process of claim 6 wherein the metal atom represented by M is selected from the group consisting of Li, Na, K, Zn and Cu.

APPENDIX IV:

THE AMENDED CLAIMS (clean version):

1. (previously presented) A compound of formula I



in which

R¹ represents a hydrogen or a methyl group;

R² represents a hydrogen atom or an optionally substituted C₁-C₁₀-alkyl, C₂-C₁₀-alkenyl, C₂-C₁₀-alkynyl, C₄-C₁₀-alkadienyl or phenyl group, wherein the optional substituents are selected from the group consisting of nitro, cyano, C₃-C₆-cycloalkyl, C₃-C₆-cycloalkenyl, C₁-C₆-haloalkyl, C₃-C₆-halocycloalkyl, C₁-C₆-alkoxy, C₁-C₆-haloalkoxy, tri-C₁-C₄-alkylsilyl, phenyl, halophenyl, dihalophenyl and pyridyl;

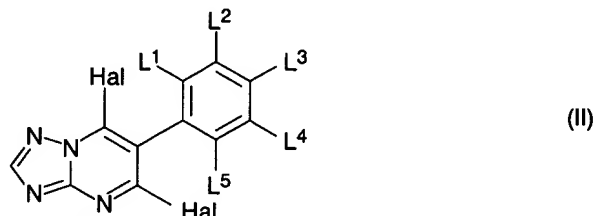
Hal represents a halogen atom; and

L¹ through L⁵ each represent a hydrogen or halogen atom or an C₁-C₁₀-alkyl, C₁-C₁₀-alkoxy or nitro group, provided that at least one of L¹ through L⁵ represents a nitro or alkoxy group.

2. (original) A compound according to claim 1 in which at least one of L¹ and L⁵ represents a halogen atom.
3. (original) A compound according to claim 1 in which R² represents a hydrogen or a C₁₋₁₀ alkyl group.
4. (original) A compound according to claim 1 in which at least one of R¹ and R² represents a hydrogen atom.
5. (previously presented) The compound of formula I defined in claim 1 which is selected from the group consisting of
- 5-chloro-6-(4-methoxyphenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,-4]triazolo[1,5-a]pyrimidine;
- 5-chloro-6-(4-nitrophenyl)-7-(2,2,2-trifluoroethylamino)-[1,2,4]-triazolo[1,5-a]pyrimidine; and

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6. (currently amended) A process for the preparation of a compound of formula I as defined in claim 1, which process comprises:
treating a compound of formula II



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in which M represents a hydrogen atom or an equivalent of a metal atom,

to produce the compound of formula I.

7. (previously presented) A fungicidal composition which comprises a carrier, and as active agent, at least one compound of formula I as defined in claim 1.
8. (previously presented) A method of combating fungus at a locus which comprises treating the locus with a fungicidally effective amount of a compound of formula I as defined in claim 1.
9. (previously presented) The process of claim 6 wherein the metal atom represented by M is selected from the group consisting of Li, Na, K, Zn and Cu.